Valuation of agricultural products - A legal approach (Conference review)

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"VALUATION OF AGRICULTURAL PRODUCTS – A LEGAL APPROACH"
CONFERENCE REVIEW [*]

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The colloquium organized with the assistance of the University of Costa Rica and the substantial help of Rafael González Ballar, Marlen León Guzmán and Hugo Muñoz is one of these conferences that substantially foster reflection and help their participants to make a significant step forward.

The conclusions that can be drawn from these two days of work, dedicated to the study of the valorization of products (both agricultural and agro-food) and the combination of the notions of market and appropriation, are extremely diverse. Such a result seemed foreseeable, as the notion of diversity is strongly expressed in every aspect of Costa Rica: diversity of landscapes and communities, diversity of climates, cultures and religions, diversity of the natural fauna and flora as well as agricultural productions. Such diversity may be common around the world, but it is especially intense in Costa Rica. Yet, it does not prevent the population from coming together around common interests such as the protection of the environment and the biodiversity.

It may seem at first that there is no compatibility between the notions of diversity and law. Instead of trying to organize such diversity, why not simply overlook it? The question is indeed to figure out the right approach: should we embrace diversity, even if that means taking of the risk of scattering the existing rules and make them more complex, or should we choose to leave it out, which could lead to unwanted standardization and approximation? The conclusion that Lascaux came to at the end of this two-day conference is briefly expressed below.

This symposium opened the door to a decisive question. What is the best solution? Which option should be chosen? *A priori*, diversity is one of these notions that can whether imply a choice, a contradiction or a conflict, a variety, a difference or a subtlety. It is therefore very difficult to apprehend it, at least on a legal point of view. To deal with diversity could represent a significant challenge, if not an obstacle, and it could be easier to simply circumvent it. But from another point of view, diversity is inherent to the-day-to-day life, it is consubstantial with it. If creating an abstract right, detached from reality, cannot be considered an option, it should at least be desired that we go "*from the truth to the rule*" and not the other way round, as it is too often done (**J.E. Romero**). Besides, if we consider that diversity participates, to a certain extent, to the definition of the quality

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[1] Author of the original form (in French). This paper was translated in English by Lascaux team.

[2] The Lascaux program (2009-2014) is linked to the 7th Framework Programme of the European Research Council ("IDEAS"). "Lascaux" is headed by François Collart Dutilleul, Professor of Law at the University of Nantes (France) and Member of the University Institute of France (to know more about Lascaux: http://www.droit-aliments-terre.eu/).

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of life and the quality of products (**L. Boy**), it seems essential, or at least tempting, to take it into consideration - depending on each person's level of requirements. It would therefore seem necessary to find a way to promote and legally protect this diversity, whether in its cultural, biological, social or economical aspects.
Encouraging diversity rather than opposing it may seem like a noble task, but it is very difficult to implement it in practice. Mostly, this could entail a reconsideration of the strong and long-established imbalance between the abundance of economic-based regulations on one side and the rarity of environmental and social regulations on the other side. Therefore, it would be wise to find a balance between the three elements first, so as to ensure a sustainable and adaptable development of national economies (**R. González Ballar**).

Some other inequalities, either minor or significant, can be added to the list, which all relate to one major imbalance between the North and the South:

- For instance, a treaty has been dedicated to the sole activity of biogenetic research (the UPOV treaty), excluding other activities such as nature or the work of farmers from rural populations, while all of them equally contribute to the development of plants **(F. Arauz Cavallini)**.

- The signature of the same treaty resulted in a strong inequality between the contracting parties, as Costa Rica was pressured to sign by the United States, which threatened to appeal before the Dispute Settlement Body of the World Trade Organization for failure to comply with the dispositions of the TRIPS agreement **(N. Morera)**.

- There is also a difference in the field of legal culture, since countries that were not familiar with the concept of intellectual property had no choice but to adopt its principles **(N. Morera)** due to the supremacy of international law. **(J.E. Romero)**.

- Finally, there is a imbalance in the area of knowledge and capacities: on one hand treaties assume equality between states and between researchers when in fact they should not stand on an equal footing to begin with **(I. Palacios, N. Morera)**; on the other hand the result of agro-food research is not always appreciated enough because of a lack of adequate or available legal instruments within the international legal system **(O. Quirós)**.

All of these imbalances have been instituted or maintained by international conventional law, which sometimes results in the negation of diversity. The Free Trade Agreement between the US and Costa Rica provides a good example of that situation. In this case, Costa Rica had to produce yellow corn (preferred by North America) to the detriment of its traditional white corn in order to benefit from the export scheme set in the agreement. Choosing otherwise would have prevented the country from entering the US market. This resulted in a significant decrease in the production of white corn, due to a lack of space available. Although incitement to give up local traditions was not a requirement in law, it became one in fact because of the way the conditions of free trade were defined in the Agreement (**F. Alvarez**).

We can therefore wonder whether a legal system that results in such consequences for some countries is satisfactory or not, and whether it ought to be reconsidered to either be more neutral (only providing some mechanisms to preserve diversity) or more compelling (forcing states and operators to assimilate and develop diversity).

The particular example of biotech patents and inventions deserves some scrutiny. Because they are means of valorization applicable directly to a particular product, they are distinct from official signs of quality (SIQO), which focus on means of production or marketing channels **(F. Collart Dutilleul)** and are a response to the growing demands of consumers regarding quality guarantees, at least in European countries (**C. Del Cont**). The regulation applicable to biotech patents and inventions causes a strong imbalance between economical powers on one side and developing countries on the other side. Countries from the first category use the regulations as a means to require their business partners to conduct themselves in accordance with the contract, whereas countries from the second category end up facing a dilemma : if they choose not to respect the applicable rules, they take the risk of being legitimately sanctioned by the Dispute Settlement Body of the WTO ; but if their partners violate the rules, there is almost nothing they can practically do, as any economic sanction would threaten their own trade balance **(P. Reis)**.

Is the reason for this kind of submission by law to be found in the fact that patents and plant-variety law is one single package that takes precedence over any other rule when applied? There is indeed no special rule according to the specificity of each situation **(J.-P. Clavier)**. The law of patents applies identically in every circumstances (and so it goes for plant-variety rights; **S. Morales**). This is the simplest answer for some; for others, it is a simplistic solution. The uniqueness of this approach causes devastating results for those who do not have the same legal and technical capacities. This criticism, however, does not apply to the law on designation of origin and quality indications, which aim is precisely to protect local particularities as much as possible, even to the detriment of effectiveness. The conclusion that therefore follows is that in order to be efficient, the law must not be dispersed, balanced and respectful of diversity; it needs to be unitary **(F. Collart Dutilleul)**.

This question deserves some thinking if the plan is to effectively protect diversity of rights, cultures and further on diversity agricultural and agro-food productions. Is it enough to simply combine the different legislations, to temper patent law and strengthen the law on quality indications? Should we choose one system rather than the other or try to work out a compromise between the two? Should there be special rights, for instance to regulate fair trade (**P.-E. Bouillot, F. Garcia and C. Collart Dutilleul**), or should we adopt the model of mutual recognition procedures which rely on bilateral agreements between states and encourage trade in the - sufficient? - respect of diversity of products (**E. Ramirez**) ? Any final answer would be premature. The only certain fact is the need for some balance, which infers the respect of diversity.

But how important the respect of diversity ought to be? The issue of the limits of protection or encouragement of diversity by law must be taken into consideration. When a law is too detailed or too advanced, it can easily lead to confusion if not strictly defined. On the other side, the complexity of a law is not always such a bad thing: for instance, the implementation of both regional law and national law in Central America results in placing different products with different levels of health protection on the market. The safest products are therefore proposed to the consumers (with the lowest level of harmlessness), and the value of these products is increased **(H. Munoz Ureña)**.In Europe however, things are more complicated. In order to protect the consumers, a very strict and in-depth labeling policy has been established, but it is so complicated that it has become almost incomprehensible **(M. Friant-Perrot)**. The same observation goes for indications of quality: the more numerous they are, the less meaningful they become, making them useless in the end. That is the reason why it is important to keep some balance, and if Central America wants to follow the example of European labeling law, it must be careful not to repeat the same mistakes **(M. León Guzmán)**.

In the end, there are two possible approaches, two different ways of apprehending the law and one major question. Deciding whether or not it would be possible to combine law and diversity is almost

impossible. The only thing that is certain is that diversity has not been properly assimilated by law yet.